

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**VINAY LIKHITE, Personal Representative
of the Estate of KEITH LIKHITE,**

Plaintiff,

vs.

No. CIV 06-0227 LCS/KBM

**REHOBOTH MCKINLEY CHRISTIAN
HEALTHCARE SERVICES, INC.,**

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Partial Summary Judgment on the Issues of Negligence and Negligence *Per Se*, filed on December 26, 2006. (Doc. 67.) The Court, acting upon consent and designation pursuant to 28 U.S.C. § 636(c), and having reviewed the Plaintiff's motion and being otherwise fully advised, finds that the motion should be **DENIED AS UNTIMELY.**

In the Initial Pretrial Report filed on June 27, 2006, this Court set a deadline of December 22, 2006 for the filing of pretrial motions. (Doc. 16 at 11.) Local Rule 16.1 provides that "[a]ny deadlines established in the Initial Pretrial report will govern actions in pretrial matters once the report is entered by the Court. Any modification of the deadlines, whether or not opposed, will require a showing of good cause and Court approval." D.N.M. LR-Civ. 16.1. *See also* FED. R. CIV. P. 16(b). Plaintiff filed the most recent motion for partial summary judgment on December 26, 2006 – four days after the deadline. (Doc. 67.) Neither Plaintiff nor Defendant requested an

extension of the pretrial motions filing deadline.¹

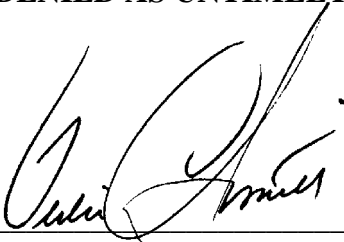
By filing on December 26, 2006, Plaintiff's motion will not be fully briefed until January 23, 2007. *See* D.N.M. LR-Civ. 7.6(a). January 23, 2007 is the day scheduled to hold the pretrial conference in this matter. The Court is confident in asserting that practically every judge in this district requires enough time to rule on dispositive motions *before* the pretrial conference. Moreover, the pretrial order is due on January 16, 2007. (*See* Doc. 59.) The pretrial order "supercedes the parties' pleadings[and] controls the scope and course of trial" *Chavez v. City of Las Cruces*, Civ. No. 05-286, Doc. 67 at 11 (D.N.M. July 10, 2006) (internal quotation marks and citations omitted). The parties would not only have a difficult time fashioning a pretrial order with an unbriefed motion hanging over their heads, but would find it impossible to prepare for trial if the Court could not decide that motion until days before the trial.

For the foregoing reasons, the Court will deny Plaintiff's motion as untimely.

WHEREFORE,

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment on the Issues of Negligence and Negligence *Per Se* (Doc. 67) is **DENIED AS UNTIMELY.**

IT IS SO ORDERED.



LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE

¹ The parties received an extension of time to depose certain witnesses. (Doc. 53.) This extension of discovery deadlines, however, did not affect the pretrial motions filing deadline.